Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas

CC Docket No. 00-65

To: The Commission

REPLY BRIEF IN SUPPORT OF SUPPLEMENTAL APPLICATION OF SOUTHWESTERN BELL

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Southwestern Bell filed its Supplemental Application after two years of intensive state review and months of exhaustive federal review. During the course of that review, it was established beyond good-faith dispute that Southwestern Bell Telephone Company ("SWBT") is subject to rigorous, expert oversight by the Texas PUC; that the Texas 271 Agreement (or "T2A") goes beyond the requirements of the Telecommunications Act to ease entry by new competitors; that SWBT's wholesale systems and processes have been tested successfully by independent experts and proved by processing millions of commercial transactions; that Southwestern Bell has an exhaustive performance monitoring program in place, which provides CLECs and regulators the information needed to detect, at an early stage, any hints of discrimination; that – as a result of all of these factors and more – local markets in Texas are as competitive as any in the country; and that consumers will benefit from Southwestern Bell's provision of long distance.

These years of vetting have resolved thousands of issues surrounding Southwestern Bell's provision of long distance services and left only three seriously contested issues on the table: access to xDSL-capable loops, SWBT's performance in provisioning unbundled loops through the hot cut process, and CLECs' ability to achieve nondiscriminatory reject rates using SWBT's OSS. Southwestern Bell's supplemental filing on April 5, 2000, addressed each of these issues in depth and demonstrated satisfaction of the applicable Commission standards.

Comments on the Supplemental Application confirm that the list of issues was properly winnowed, and also that there are no unexplored facets to the three remaining issues. CLECs merely recite the same stale assertions that Southwestern Bell rebutted on April 5. Moreover, as part of SWBT's routine performance reporting, performance data for March and April 2000 are now available. These data, which cover the period of time put most directly at issue by commenters, show even better performance in serving wholesale customers than in prior months – disproving speculation that performance might decline as CLEC activity continued to increase.

The United States Department of Justice ("DOJ") has noted the significance of the new performance data. See DOJ Supp. Eval. at 5. Moreover, DOJ has explained that notwithstanding concerns it previously expressed about interconnection performance, DOJ now agrees that this issue is resolved. Id.

For its part, the Texas Public Utility Commission ("Texas PUC" or "Texas Commission") has once again expressed strong, unanimous, and carefully reasoned support for Southwestern Bell's Application. The Texas Commission's April 26 Evaluation addressed, one-by-one, the specific areas of interest identified by Chairman Kennard. The Texas PUC assessed SWBT's performance data and the recent proceedings in Texas regarding access to xDSL loops, hot cuts, and OSS. Through this filing as well as its prior two submissions, the Texas PUC has

made plain its willingness and capacity to provide vigilant oversight of SWBT's operations in Texas, long after interLATA relief has been granted. DOJ specifically praised the work of the Texas PUC staff, noting its "admirable oversight of" interconnection trunking. DOJ Supp. Eval. at 5.

The Texas PUC did not have before it the performance results for April, but those reports confirm what the Texas Commission already has found. Appendix B to this Application contains Southwestern Bell's performance reports for April 2000,[1] which show:

- Continued improvement in provisioning unbundled loops for CLECs' advanced services. The April performance results for xDSL loops, for example, show satisfaction of the Texas PUC's parity or benchmark standard in 13 of the 14 relevant categories. The only exception was missed due dates due to lack of facilities; as Southwestern Bell has already demonstrated, this particular measure is systematically skewed in the current market environment.

- Hot cut results that meet the Texas PUC's benchmarks for premature disconnects and delayed conversions, and show timely completion of hot cuts 99 percent of the time. This level of performance compares favorably with Bell Atlantic's performance in New York, and gives Texas CLECs a full opportunity to compete.

- Orders are flowing through all OSS interfaces at parity; CLEC reject rates continue to decline (now averaging less than 20 percent for EDI); those Local Service Requests ("LSRs") that are rejected are returned in a timely fashion either electronically or manually – all while CLEC order volumes are growing at a rate of roughly 20 percent per month.

- Continued performance improvement even as CLEC volumes increase. Tier 2 performance – solid to begin with – has now improved for five straight months, culminating in SWBT's meeting 86.4% of Tier 2 measures (and 87.3% of all measures) in April.

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[1] The April performance results are responsive to commenters' April 26 filings and, in any event, have been filed at the direct request of Commission staff. See Public Notice, Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, DA-99-1994 (rel. Sept. 28, 1999). They are properly considered by the Commission on either basis.

In addition to the April performance data submitted with this Reply Brief, Southwestern Bell has filed hot cut performance results from Texas PUC-supervised data reconciliations. Ex Parte Letter from Austin C. Schlick, Kellogg, Huber, Hansen, Todd & Evans (Apr. 25, 2000) ("Apr. 25, 2000 Hot Cuts Ex Parte"). The reconciled data for December through February 2000 addressed concerns voiced in Docket No. 00-4 about the reliability of Southwestern Bell's previously submitted hot cut data, while showing continued satisfaction of both the hot cut performance yardstick set forth in the New York Order,[2] and the underlying statutory nondiscrimination standard. Apr. 25, 2000 Hot Cuts Ex Parte.

The April performance data and reconciled hot cuts data thus perfect Southwestern Bell's evidence on each of the three final issues identified by Chairman Kennard. They complement the qualitative showing, set forth in this Reply Brief and the accompanying affidavits, that Southwestern Bell continues to meet all requirements for section 271 relief, continues to be closely supervised by the Texas PUC, and continues to take steps above and beyond the minimum requirements of section 271 to maintain an open local market in Texas.

With this accumulation of supporting evidence, there has been a parallel accumulation of third-party support for granting section 271 relief in Texas. During the last two months, more than 45 commenters have weighed-in favorably on this Application. The Texas cities of Austin, Fort Worth, and San Antonio, the Alliance for Public Technology (representing almost 300 nonprofit and individual members in support of advanced telecommunications capabilities), and

[2] Memorandum Opinion and Order, Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd 3953 (1999) ("New York Order").

Victoria Internet Service Providers (a regional ISP in Texas), are among those who agree that SBC has earned the right to enter the interLATA market.[3]

In response to Chairman Kennard's request for evidence regarding CLECs' ability to integrate their own order-processing systems with SWBT's OSS, several Texas carriers have confirmed that they are receiving the information and assistance they need to accomplish such integration. Sage Telecom verifies that through the "documentation and technical support" and "cooperation" received from SWBT, Sage has successfully integrated information between SBC's pre-ordering and ordering interfaces on a commercial basis. Sage commends SWBT's commitment to resolving problems as they arise.[4] Navigator Telecommunications similarly praises Southwestern Bell's OSS and support, adding that the two companies are moving toward "seamless integration of their OSS."[5] MaxCom finds the interfaces it has chosen "easy to use and to navigate" and "available when [it] need[s] them."[6] A-CBT System reports that SWBT's OSS are "strongly and promptly supported," and that orders are "processed in a timely manner."[7]

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[3] Ex Parte Letter from Kirk Watson, Mayor, City of Austin (Apr. 26, 2000); Ex Parte Letter from Tim Bannwolf, City Councilman, District 9, City of San Antonio (Apr. 24, 2000); Ex Parte Letter from Kenneth Barr, Mayor, City of Fort Worth (Apr. 26, 2000); Further Comments of the Alliance for Public Technology Supporting SBC's Request for Authority to Provide Long Distance Service in Texas at 2-3 (Apr. 26, 2000); Ex Parte Letter from Chuck Simons, CEO, Victoria Internet Service Providers (Apr. 25, 2000).

[4] Ex Parte Letter from Gary P. Nuttall, Vice President – Operations, Sage Telecom (Mar. 31, 2000).

[5] Ex Parte Letter from Louis F. McAlister, President & CEO, Navigator Telecommunications, Inc. (Mar. 31, 2000).

[6] Ex Parte Letter from Bryan Clingan, Provisioning Coordinator, MaxCom, Inc. (Mar. 29, 2000).

[7] Ex Parte Letter from Chuck N. Salas, President, A-CBT System, Inc. (Mar. 30, 2000).

Logix Communications praises SWBT's attentiveness to requests and to dispute resolution.[8] Shell Offshore Services, Tele-One Communications, Delta Phones, and Teleco U.S.A likewise have joined in praising the assistance SWBT has provided in systems development and other aspects of local market entry.[9]

Predictably, however, the Big Three long distance companies persist in their opposition to full long distance competition. But their opposition is just as revealing as other commenters' supportive filings. Unable to find much to object to in SWBT's current local performance, AT&T falls back to disputing the Commission's prior orders and speculating that Southwestern Bell might not comply with its obligations to unbundle local loops when it deploys line sharing and a new generation of network equipment in the future. See AT&T Supp. at 10-26. None of those arguments has any merit. Indeed, AT&T's ability to compete effectively in Texas is confirmed by AT&T's own 1999 Annual Report, which singles out Texas as a state where AT&T is successfully winning customers, and touts that AT&T "[s]igned up nearly 200,000 local customers" in New York and Texas last year. AT&T, 1999 Annual Report at 9.

MCI WorldCom is equally clear that it is executing the same plan in Texas as it did in New York – rolling out a mass-market, UNE-based offering just as the incumbent BOC receives interLATA relief. Plainly expecting that Southwestern Bell's January 10 Application would be granted, MCI WorldCom scheduled its roll-out of local service for April 15, one week after the

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[8] Ex Parte Letter from John W. Gray, Jr., Regulatory Vice President, Logix Communications (Apr. 26, 2000).

[9] Ex Parte Letter from John K. Cinnater, Sr. Comm. Engineer, Shell Offshore Services Co. (Apr. 3, 2000); Ex Parte Letter from Carey Boyles, President, Tele-One Communications, Inc. (Apr. 3, 2000); Ex Parte Letter from Jon E. Davis, Vice President, Delta Phones, Inc. (Apr. 3, 2000); Ex Parte Letter from Kerzon R. Nickens, President, Teleco U.S.A., Inc. (Apr. 4, 2000).

expected decision. See MCI WorldCom Supp. at 3. MCI WorldCom miscalculated, however, and was more successful in its regulatory gambit than expected. Thus MCI WorldCom, having insisted for several months that "[l]ocal competition in Texas cannot yet succeed" due to supposed failings of Southwestern Bell,[10] finds itself in the awkward position of providing mass-market service, yet having no significant operational problems to report.

Sprint likewise acknowledges that it has now "initiate[d] local service in certain Texas metropolitan areas" – thus positioning itself to enter the local market seriously as soon as Southwestern Bell also can offer packages of local and long distance service. Sprint Supp. at 49. But Sprint, too, is unable to cite any substantial operational problems with its own local service, instead marching through a pro forma recitation of arguments made by other carriers (such as Covad, AT&T, and Allegiance) in Docket No. 00-4, regarding xDSL-capable loops, hot cuts, and OSS. Id. at 8-45.

As the Big Three's recent roll-outs suggest, the torrid pace of local competition in Texas shows no signs of cooling. The April 5 supplemental filing noted that CLECs served an estimated 1.7 million local lines in Texas as of February 2000. One month later, CLECs served more than 1.8 million local lines. See Habeeb Supp. Reply Aff. ¶ 4 (App. A, Vol. A-4, Tab 3). Between January and March, SWBT provisioned more than 73,000 UNE loop/port combinations and almost 35,000 interconnection trunks, raising the installed totals to 244,000 and 437,000, respectively. See id. Attach. A. CLECs now serve more than a third of all business lines in Texas's major metropolitan areas, including Austin, Corpus Christi, Dallas/Fort Worth, Houston,

[10] MCI WorldCom Reply at 1, CC Docket No. 00-4; see also Ex Parte Letter from Bradley Stillman, Senior Policy Counsel, MCI WorldCom, at 2 (Mar. 9, 2000) ("SBC/Southwestern Bell's operations support systems (OSS) cannot handle commercial scale launch.").

and San Antonio, and they are winning 9 out of every 10 new business lines. Id. Growth in competition for the provision of advanced services is especially rapid. The total number of DSL loops provisioned in Texas more than doubled during the first three months of this year. See id. ¶ 3 & Attach. A. As the Texas PUC recognizes, these numbers show that local competition in Texas "is here and it is here to stay."[11] Texas PUC Supp. Eval. at 4.

DISCUSSION

The remainder of this Reply Brief addresses the issues that have been raised by opponents of the April 5 Application. Parts I, II, and III show that the three key issues – xDSL loops, hot cuts, and OSS integration and reject rates – can now be deemed resolved. Section IV shows that none of the other concerns raised by commenters suggests any failure to meet the 14 checklist requirements. Finally, Part V demonstrates that the public interest in opening the Texas market to full interLATA competition remains overwhelming.

I. SWBT PROVIDES NONDISCRIMINATORY ACCESS TO xDSL-CAPABLE LOOPS

CLECs' advanced services continue to grow by leaps and bounds in Texas, providing strong evidence that these CLECs have a meaningful opportunity to compete. Since SWBT's supplemental filing on April 5, SWBT has provisioned approximately 2,000 more xDSL-capable loops in Texas, a remarkable figure given that SWBT provisioned a total of 5,000 xDSL loops between August 1999 and April 2000. See Habeeb Aff. Attach. A; SWBT Supp. Br. at 11. In direct contrast to the predictions of some CLECs throughout this proceeding, SWBT's

[11] AT&T's suggestion that Southwestern Bell has miscounted the number of facilities-based lines is disingenuous. AT&T's own estimate, which relies on an admittedly incomplete survey and which counts fewer lines than E911 listings, is facially implausible. See Habeeb Supp. Reply Aff. ¶ 6 (App. A, Vol. A-4, Tab 3).

provisioning performance has improved across the board even as SWBT has met this surge in demand. There no longer should be any doubt that SWBT offers nondiscriminatory access to xDSL-capable loops.

Since Southwestern Bell filed its Supplemental Application on April 5, the Texas Commission has continued its unparalleled scrutiny of SWBT's provisioning of xDSL-capable loops and related services. See Texas PUC Eval. at 60. In April, the Texas Commission held a series of xDSL workshops concerning both performance measurements ("PMs") and implementation. During these supplemental proceedings, the Texas PUC examined and addressed each of the complaints that CLECs have raised in their comments on SWBT's application. The Texas PUC has not wavered in its conclusion that "SWBT provides nondiscriminatory access to loops used by competitors to provide advanced services." Texas PUC Supp. Eval. at 24.

Meanwhile, SBC's advanced services affiliate, Advanced Solutions, Inc. ("ASI"), has continued to build a track record of structurally separate operations. ASI is functioning like any other data CLEC when it utilizes SWBT's pre-ordering and ordering interfaces. In April, ASI ordered 282 xDSL-capable loops for its ADSL customers, thus fulfilling the commitment described in the April 5 filing. See Brown Supp. Reply Aff. ¶ 7 (App. A, Tab 2).

Because SBC has shown nondiscrimination in both of the ways suggested in the New York Order – through both performance data and its establishment of a separate advanced services affiliate, see New York Order, 15 FCC Rcd at 4122, ¶ 330 – CLECs now resort to criticizing SWBT for failing to adhere to nonexistent obligations. AT&T, Sprint, Covad, and Rhythms each contend that SWBT cannot satisfy checklist item (ii) because SWBT will not provide line sharing to unaffiliated carriers until May 29, 2000, ignoring the fact that line sharing

need not be available until June 6. AT&T and Sprint additionally argue that SWBT must offer a line-sharing variation of the UNE Platform, again ignoring the actual language of the Line Sharing Order.[12] Finally, Rhythms and Covad persist in their allegations that SWBT has yet to satisfy the terms of the Texas DSL Arbitration Award, ignoring the Texas PUC's determination that SWBT is in full conformity. See Texas PUC Supp. Eval. at 24. In each case, SWBT has fully complied with all existing regulatory obligations.

A. Performance Results

As the Texas Commission explained in its Supplemental Evaluation, "with few exceptions, SWBT's performance has continued to improve as CLEC volumes increase, thus directly addressing DOJ's overarching concern regarding SWBT's xDSL loop performance." Id. at 36. With SWBT's latest performance data, SWBT has unequivocally demonstrated that it provides nondiscriminatory access. See Noland/Dysart Supp. Reply Aff. ¶¶ 93-104 (App. A, Vol. A-2, Tab 1); Dysart Supp. Reply Aff. ¶¶ 22–60 (App. A, Vol. A-4, Tab 2).

Faced with SWBT's record of demonstrated performance, Covad and other CLECs attack the performance measurements themselves.[13] See, e.g., Covad Supp. at 10; Covad's Goodpastor

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[12] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 14 FCC Rcd 20912 (1999) ("Line Sharing Order").

[13] Covad contends that SWBT's xDSL performance measures are inadequate because the Texas PUC continues to monitor and to perfect those measures. See Covad Supp. at 10-11. The same can be said for every other performance measure that is subject to the Texas PUC's semi-annual review. The six-month review process was designed with the specific intent of building flexibility into the performance measure system. Dysart Aff. ¶ 45 (Jan. 10 Appl. App. A, Part A-5, Tab 1). Covad's suggestion that SWBT's xDSL firm confirmation order ("FOC") measure (PM 5.1) does not track "how SWBT's process works in the aggregate" is equally misguided. Covad Supp. at 11 n.15. When an xDSL-loop order does not require manual loop qualification – e.g., where loop make-up information is available electronically – PM 5.1 starts with receipt of a

Supp. Decl. ¶¶ 21-25, 62. This tactical shift highlights SWBT's growing record of nondiscriminatory performance. Moreover, any CLECs concerned with the reliability of SWBT's data need only take advantage of SWBT's standing offer to reconcile their carrier-specific data. Dysart Supp. Reply Aff. ¶ 19; see also Noland/Dysart Supp. Reply Aff. ¶ 74 (SWBT's LSC has reconciled and investigated order data from CLECs such as NorthPoint each time they have requested).

1. xDSL-Capable Loops

Installation Intervals. SWBT's provisioning intervals (PM 55.1) are consistently at parity. SWBT provisioned loops without conditioning at parity with retail in each month from October 1999 to April 2000. For loops with conditioning, SWBT met or exceeded parity for each of the past three months. Dysart Supp. Reply Aff. ¶17.

Covad trots out the tired argument that SWBT's PM 55.1 fails to capture all of Covad's loops. See Covad Supp. at 20. As Southwestern Bell has explained, see Dysart Reply Aff. ¶¶ 17-18 (Feb. 22 Reply App. A-2, Tab 4), in order to protect the integrity of this timeliness measure, the business rules for PM 55.1 exclude all orders requesting a due date outside of the standard interval. Review of Covad's March orders reveals that large numbers of due dates beyond the standard interval. See Noland/Dysart Supp. Reply Aff. ¶¶ 102-103. Those within the standard interval were included in SWBT's PM 55.1 data. It should be noted that Covad falsely asserted in recent Texas PUC proceedings that it never orders loops with due dates beyond the

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valid LSR and ends with return of a FOC. See Dysart Supp. Reply Aff. Attach. A. By contrast, when manual loop qualification is needed, PM 57 tracks the time SWBT engineers take to return loop make-up information to the LOC. See Dysart Reply Aff. ¶¶ 36-37 (Feb. 22 Reply App. A, Vol. A-2, Tab 4). PM 5.1 then tracks the interval from receipt of loop make-up information to

standard interval. See Chapman Supp. Reply Aff. ¶ 26 (App. A, Vol. A-1, Tab 4). Covad's claims simply cannot be trusted nor relied upon.

Loop Quality. Installation quality for xDSL-capable loops also has been in parity for most of the monthly reports, and continues to improve. In April, for example, SWBT was at parity for PM 59-08, the percentage of trouble reports within 30 days. Dysart Supp. Reply Aff. ¶ 21. This parity result capped six months of consistent improvement in the percentage of CLEC trouble reports on xDSL-capable loops (a measure that, as the Texas Commission has noted, includes CLEC trouble reports that are in no way SWBT's fault). See id.; Texas PUC Supp. Eval. at 32. The trouble report rate for xDSL-capable loops (PM 65-08) – which provides a more accurate picture of xDSL loop quality – has been in parity for each of the past eight months, and has shown steadily improved performance in the last four. Dysart Supp. Reply Aff. ¶ 22.

Maintenance and Repair. SWBT's maintenance and repair performance is consistently at or above parity. See Dysart Supp. Reply Aff. ¶¶ 24-26. In each of the past eight months, CLECs' unbundled DSL loops have had on a percentage basis fewer repeat trouble reports than SBC's DSL retail service. Id. ¶ 26 (discussing PM 69-08). Similarly, over the past six months, SBC has dispatched and repaired CLECs' unbundled DSL loops faster (by approximately 11 hours) than it has repaired its own loops. Id. ¶ 25 (PM 67-08). The overall CLEC trouble report rate (PM 65-08) dropped from 4.6% in February to 3.3% in March to a mere 2.4% in April. See App. B, Tab 1, at 8. SWBT's maintenance and repair performance has improved despite increasing CLEC orders.

FOC return. See Dysart Supp. Aff. Attach. A. Thus every stage of the ordering and provisioning

Access to OSS. Access to loop make-up information (PM 57-01) has been in parity for 3 of the 4 months since this measure was redefined as suggested by DOJ. See Dysart Supp. Reply Aff. ¶ 344; DOJ Eval. at 12-13. Nevertheless, Covad comments that SWBT's average response time is outside of the 3-day interval established by the Texas DSL Arbitration Award. While that was true in February, in March and April SWBT returned loop make-up information in 2.6 and 1.8 days, respectively, well below the 3-day standard. Ex Parte Letter from Priscilla Hill-Ardoin, SBC (Mar. 23, 2000) (PM 57-01); see also App. B, Tab 2. On April 29, moreover, SWBT rolled out real-time access to loop make-up information, speeding access to this loop information even further. See Chapman/Dysart Supp. Aff. ¶ 28 (Apr. 5 Supp. Appl. Vol. D, Tab 1).

Beginning in March 2000, SWBT began collecting FOC return data for xDSL-capable loop orders. For CLECs using the EDI interface, SWBT met the 24-hour benchmark for orders of 1-20 loops in both March and April. See Dysart Supp. Reply Aff. ¶ 29. SWBT narrowly missed the benchmark for CLECs placing orders through LEX in each month, but nevertheless returned FOCs within 24 hours for more than 92 percent of xDSL loop orders. Id. ¶ 28.

Missed Due Dates. SWBT's performance results for missed due dates have shown dramatic improvement even as order volumes have multiplied several-fold, and now demonstrate parity service. In April, for example, SWBT missed a mere 2.5 percent of CLEC due dates, as compared to 10.9 percent missed due dates on the retail side. See Dysart Supp. Reply Aff. ¶ 33. SWBT met or exceeded parity for six of the seven measures. Id. ¶ 33-35 (PMs 58-09, 60-08, 60-21, 60-34, 61-08, 62-09, 63-09).

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process is covered by a SWBT performance measure.

The one missed measure is PM 60-08: percentage missed due dates from lack of facilities. As Southwestern Bell has explained throughout these proceedings, performance measures such as PM 60-08 – which measure the level of missed due dates for SBC retail DSL services against SBC's wholesale operations – are skewed. On the one hand, SBC currently utilizes nondiscriminatory, Commission-approved interim line sharing for its retail ADSL services. Chapman/Dysart Supp. Aff. ¶¶ 31-42; SWBT Supp. Br. at 12-13. On the other hand, CLECs use a stand-alone loop (often available at a discount under the SBC/Ameritech merger conditions) to provision xDSL service. CLECs are therefore far more likely than SWBT to run into lack of facilities problems. PM 60-08 is simply not an apples-to-apples comparison.

Sprint ignores this simple truth, and argues that the Commission should ignore parity of installation intervals in favor of reliance upon SWBT-caused missed due dates. See Sprint Supp. at 13; see also Rhythms Supp. at 11. That argument is both invalid and self-serving. Moreover, even on its own terms, Sprint's argument fails. PM 58-09 shows that the percentage of SWBT-missed due dates has been in parity during both March and April. Once that measure is adjusted to reflect today's permissible interim line sharing by excluding misses due to lack of facilities, SWBT has offered parity performance for each of the past five months. Texas PUC Supp. Eval. at 31; see also App. B, Tab 1, p. 6 (parity performance for April prior to exclusion). Finally, PM 60-08 has seen steadily improving performance, due in part to SWBT's policy of sending engineers out the day before an order is due to check available facilities. See Noland/Dysart Supp. Reply Aff. ¶ 101. In April, SWBT missed a mere 1.5% of CLEC orders due to lack of facilities, a percentage that clearly provides CLECs a meaningful opportunity to compete. See App. B, Tab 1, p. 7 (PM 60-08).

2. BRI Loops

Southwestern Bell has explained the nondiscriminatory, technological reasons why one would not expect numerical parity performance for all BRI loop performance measures. See SWBT Supp. Br. at 13-14; Chapman/Dysart Supp. Aff. ¶¶ 43-46. Even so, however, SWBT's performance continues to improve. In April, SWBT met or exceeded parity or the applicable benchmark for: average installation intervals (1-10 BRI loops) (PM 55-03.1); percentage of SWBT-missed due dates (PM 58-04); average delay days due to lack of facilities (PM 61-03); average delay days for SWBT-missed due dates (PM 62-04); percentage of SWBT-missed due dates exceeding 30 days (PM 63-04); and percentage of repeat trouble reports (PM 69-03). Dysart Supp. Reply Aff. ¶ 58. Moreover, as SWBT pointed out in its supplemental filing, even when SWBT fails to meet certain ambitious benchmarks, CLECs receive better than parity performance for ISDN BRI loops. See Chapman/Dysart Supp. Aff. ¶¶ 43-49 (Feb. 22 Reply App. A, Vol. A-1, Tab 3); Dysart Supp. Reply Aff. ¶¶ 47-48.

Furthermore, SWBT's provisioning of BRI loops is hampered by the fact that SWBT neither provides the data signal nor has access to the customer's CPE. As a result, SWBT cannot test the transmission of the data signal. See Chapman/Dysart Supp. Aff. ¶ 63. Because SWBT can detect and correct problems while installing retail ISDN service, but not while installing BRI loops, SWBT naturally receives fewer trouble reports from its retail customers. See id. Not a single CLEC has challenged SWBT's nondiscriminatory, technological explanation for this disparity.

Covad contends that SWBT does not provision an industry-standard BRI loop. That is false. Covad affiant Rosenstein supports this allegation by noting that SWBT's ISDN BRI loops do not fully meet Telcordia's TR–NWT–000393 standard. See Covad's Rosenstein Supp. Decl.

¶¶ 6-7. Yet Rosenstein's rationale for selecting this standard – that Telcordia's TR–NWT–000393 standard uses the term "digital subscriber lines" in its definition – does not make this the applicable standard. The TR–NWT–000393 standard applies only to copper loops, not to loops provisioned over digital loop carrier systems such as the Marconi DISC*S. See Chapman Supp. Reply Aff. ¶ 36. As the affidavit of Jimmy Salinas explains, SWBT's digital loop carrier systems comport with the applicable industry standards. See id. ¶ 30 & Attach. C.

SWBT recognizes that its industry-standard BRI offering is nonetheless not fully IDSL compatible. That is why SWBT, in cooperation with CLECs, is creating a new unbundled loop type specifically to support IDSL service. See Chapman Supp. Reply Aff. ¶ 33. Indeed, SWBT is currently testing a new channel card that may resolve the technical issues in exactly the manner proposed by Rhythms. Id. ¶ 33. As an industry leader in the provision of DSL services, SWBT continuously pursues workarounds to overcome technical problems with new services. See generally Noland/Dysart Supp. Reply Aff. ¶¶ 93-108.

B. Implementation of the Texas PUC's DSL Arbitration Award

In their comments on Southwestern Bell's January 10 Application, a few CLECs insisted at length that Southwestern Bell had failed to fulfill its requirements under the Texas PUC's DSL Arbitration Award.[14] The Texas PUC has now resolved that issue, concluding that SWBT has fully complied with the terms of its order. See Texas PUC Supp. Eval. at 24 n.66. The Texas PUC reached this conclusion after initiating and supervising a series of xDSL implementation workshops in which SWBT and all interested CLECs participated. See id. at 24.

[14] See Arbitration Award, Petition of Rhythms Links, Inc. for Arbitration To Establish an Interconnection Agreement with Southwestern Bell Tel. Co., Docket Nos. 20226 & 20272 (Tex. PUC Nov. 30, 1999) ("DSL Arbitration Award") (SWBT Reply Br. App. B, Tab 2).

Without even attempting to rebut Nancy Meierhoff's April 5 Affidavit, Covad continues to suggest that SWBT has not yet dismantled its Separate Feeder Separation ("SFS") system. See Covad Supp. at 14; Covad's Goodpastor Supp. Decl. ¶ 32. In fact, Covad is arguing not about SFS, but about a nebulous "SWBT corporate policy," of which SFS allegedly was but one component. In making such unsupported allegations, Covad implicitly acknowledges that SWBT has dismantled the SFS system, as directed by the DSL Arbitration Award and as SWBT committed to doing at the Texas PUC December 16, 1999 Open Meeting. The Texas PUC has already reached that same conclusion, finding that "SWBT has dismantled its (SFS) Binder Group Management (BGM) system." Texas PUC Supp. Eval. at 24.

SWBT additionally has satisfied that portion of the DSL Arbitration Award directing it to establish, by May 30, 2000, electronic access to loop make-up information. DSL Arbitration Award at 111. On April 29, 2000, SWBT rolled out real-time electronic access, through Verigate and DataGate/EDI, to any actual loop make-up information contained in SWBT's electronic systems. See Ham Supp. Reply Aff. Attach. M. Since ASI and CLECs have identical access to the electronic database, SWBT provides nondiscriminatory access to loop make-up information. See Texas PUC Supp. Eval. at 27; Advanced Services Order,[15] 13 FCC Rcd at 24038, ¶ 56 (CLECs have a "meaningful opportunity to compete" when "able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not a loop is capable of supporting xDSL-based services").

[15] Memorandum Order and Opinion and Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Services Capability, 13 FCC Rcd 24011 (1998) ("Advanced Services Order").

CLECs challenge this fact of equivalent access on the basis of innuendo that has been thoroughly repudiated. Covad, for example, continues to allege that SWBT's personnel have special access to loop make-up information, and that SWBT has failed to establish a firewall that complies with the DSL Arbitration Award. See Covad Supp. at 17; Covad's Goodpastor Supp. Decl. ¶¶ 53-59. The Texas PUC reviewed this same allegation at the April 14-15 workshops, after which that Commission explicitly determined that SWBT has fully complied with all existing obligations enumerated in the DSL Arbitration Award. Texas PUC Supp. Eval. at 24; Chapman Supp. Reply Aff. ¶ 20. Moreover, in an Order issued on May 8, 2000, and filed by Southwestern Bell in this docket on May 11, the Texas Commission specifically approved SBC's "firewall" plan for ensuring nondiscriminatory access to competitively significant information. Id. ¶ 19. The fact is that SWBT has done everything that the Texas PUC has requested of it. Id. ¶ 20.

Covad goes even further afield with its assertion that the Commission cannot determine whether SWBT's loop ordering process is nondiscriminatory unless and until SWBT permits CLECs to pre-authorize loop conditioning. See Covad's Goodpastor Supp. Decl. ¶ 28. Covad carefully does not mention the reason why SWBT currently does not have such a pre-authorization system. The reason is that during the DSL Arbitration in Texas, Covad and Rhythms argued vigorously that conditioning should remain in the sole discretion of the CLEC. Agreeing with Covad and Rhythms, the arbitrators prohibited SWBT from performing conditioning unless specifically authorized to do so by the CLEC. See Chapman Supp. Reply Aff. ¶ 13. Since CLECs ordering loops on an "as is" basis cannot know whether the existing loop needs to be conditioned to function as desired, this CLEC request requires the ordering

CLEC to place a supplemental order whenever conditioning is necessary. The "complicated and clunky DSL loop ordering process" about which Covad complains is entirely of its own making.

At the April Texas PUC workshops, Covad and the other CLECs changed course and requested that SWBT permit pre-authorization of conditioning. SWBT immediately agreed to change the loop ordering process to accommodate this request, and currently is working towards creating the procedures for that system. See id. ¶ 11. Covad's assertion that the Commission cannot approve (or even review) SWBT's Application until SWBT implements this newly requested policy change is hypocrisy.

C. Line Sharing

Because of the expected operational difficulties in implementing line sharing, this Commission allowed incumbent LECs until June 6, 2000 to make the system modifications necessary to offer unbundled access to the high frequency portion of the local loop. Line Sharing Order, 14 FCC Rcd at 20972, ¶ 130. SWBT is continuing its timely and responsible efforts to make line sharing generally available starting on May 29, in advance of the deadline. See generally Cruz Supp. Aff. (Apr. 5 Supp. Appl. Vol. D, Tab 4); Dysart Supp. Reply Aff. ¶ 48; Auinbauh Supp. Reply Aff. ¶ 6 (App. A, Vol. A-1, Tab 1). SWBT offers an optional amendment to the Texas 271 Agreement that fully complies with the Line Sharing Order. See Auinbauh Supp. Reply Aff. ¶ 5 (Feb. 22 Reply App. A, Vol. A-1, Tab 2). Moreover, SWBT has proposed an interim line sharing agreement that binds SWBT to meeting the requirements of the Line Sharing Order; this interim agreement will allow CLECs to obtain line sharing on or after May 29, 2000, subject to true up, while the Texas PUC examines line sharing issues, including

pricing.[16] See Auinbauh Supp. Aff. ¶ 9 (Apr. 5 Supp. Appl. Vol. D, Tab 3); Auinbauh Supp. Reply Aff. ¶ 6. SWBT additionally will abide by the outcome of the consolidated line sharing arbitration proceeding currently pending before the Texas PUC. See Chapman Supp. Reply Aff. ¶ 41. It is anticipated that data for June 2000 line sharing performance will be captured, and be reported on or about July 20, 2000. Dysart Supp. Reply Aff. ¶ 48.

Although SWBT has complied with the terms of the Line Sharing Order, AT&T, Sprint, Covad, and the ALTS contend that SWBT cannot establish nondiscriminatory access to xDSL-capable loops because ASI currently line shares. See AT&T Supp. at 19; Sprint Supp. at 4; Covad Supp. at 4; ALTS Supp. at 11. The commenters overlook that the Line Sharing Order did more than create an entirely new UNE, defined as the high frequency portion of a loop over which the incumbent provides voice service. The Line Sharing Order additionally established the timeframe within which incumbents would have to offer this UNE under section 251(c)(3). Despite recognizing that incumbent carriers already provided voice and data services over a single loop, see Line Sharing Order, 14 FCC Rcd at 20943, ¶ 63, the FCC granted incumbent carriers 180 days – or until June 6 – to make the necessary OSS and loop facility modifications needed to come into compliance with the new obligation to provision this UNE, see id. at 20983, ¶ 161; see also id. at 20988, ¶ 177 (granting six months to come into compliance). Because the Texas PUC did not impose a more stringent deployment schedule, see id. at 20985, ¶ 168, SWBT has no duty under section 251(c)(3) to provide unbundled access to the high-frequency

[16] The Texas PUC is addressing both interim and permanent line sharing issues, including pricing and other terms and conditions, in Project No. 22168 and Project No. 22469. The Phase I (interim) hearing is scheduled for May 22, 2000, with briefs filed May 26, 2000. The Phase II (permanent proceeding) hearing is scheduled for July 10-11, 2000, with briefs to be filed July 18, 2000. See Auinbauh Supp. Reply Aff. ¶ 6 n.4.

portion of the loop ("HFPL") UNE until June 6. Once SWBT's line sharing obligations become effective, however, the same terms and conditions under which ASI will line share also will be available to every other CLEC. See Brown Supp. Reply Aff. ¶¶ 7-8.This provides an additional guarantee of nondiscriminatory access, over and above the assurance that would be present where the incumbent LEC has not established a separate advanced services affiliate.

AT&T's contention that the 1996 Act requires SWBT itself to provide HFPL functionality to UNE Platform users is equally at odds with the Line Sharing Order. See AT&T Supp. at 13-18. That order specifically and unequivocally states that "incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform." 14 FCC Rcd at 20947, ¶ 72.

Aware of this language, AT&T tries to recast its argument as a claim that AT&T is merely seeking the full features, functions, and capabilities of the unbundled loop. AT&T at 13.[17] As Southwestern Bell has previously explained, AT&T currently can offer both voice and data service, whether alone or in conjunction with another CLEC, over a single unbundled loop. See SWBT Reply Br. at 37 n.19. Moreover, a CLEC can offer such service through a variety of configurations, provided that the underlying loop is xDSL-capable. This opportunity has always been available to any CLEC, despite AT&T's protests to the contrary.[18] Auinbauh Supp. Reply Aff. ¶¶ 14-19; Cruz Supp. Aff. ¶ 6.

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[17] Nor is it clear that AT&T even wants the full features and functions of the local loop. For example, AT&T argues that SWBT discriminates by discontinuing data service to a migrating voice customer. See AT&T Supp. at 18 n.26. Yet SWBT's obligation to provide the (voice-provider) CLEC with control over all of the loop's capabilities itself precludes SWBT from offering data service over the HFPL. AT&T's contentions are mutually incompatible.

[18] See AT&T Supp. at 14-16.

AT&T simply does not want to take responsibility for provisioning the necessary line-splitter. See Auinbauh Supp. Reply Aff. ¶ 13. But SWBT is neither required to own splitters nor to offer them as unbundled network elements. See id. Indeed, the FCC's Line Sharing Order expressly states that incumbents have the discretion to maintain control over the splitter – they are under no obligation to provide it. See Line Sharing Order, 14 FCC Rcd at 20949, ¶ 76. The California PUC recently considered a similar request for the incumbent to own and provide splitter functionality and concluded that "ILEC control is discretionary, not mandatory."[19]

Likewise, when a voice customer terminates analog voice service from the incumbent, the FCC has explicitly concluded that, "in order to continue to provide data services to that customer, the competitive LEC must purchase the entire unbundled loop." Line Sharing Order, 14 FCC Rcd at 20948, ¶ 73. The CLEC need not purchase a second loop, as AT&T contends. See AT&T Supp. at 16. Rather, after line sharing is generally available, where the incumbent loses the voice service to a CLEC, a data CLEC that formerly line shared with the incumbent would secure a single loop because CLEC voice providers do not have line sharing obligations. See Line Sharing Order, 14 FCC Rcd at 20947, ¶ 72 ("we conclude that incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on loops on which the incumbent LEC is also providing analog voice service"). If the data provider becomes the new voice provider, the CLEC can arrange to provision voice and data service over the same underlying loop.[20]

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[19] California Arbitrator's Report – Line Sharing, Rulemaking 93-04-003 (rel. May 8, 2000); Auinbauh Supp. Reply Aff. Attach. B; see also id. ¶ 7.

[20] SWBT never has stated that a CLEC must acquire a second loop in order to offer both services. Compare AT&T Supp. at 16. See Auinbauh Supp. Reply Aff. ¶¶ 14-20.

Nor does SWBT have any obligation to provide for line sharing over digital loop carrier ("DLC"), as Covad and Rhythms claim. See Covad Supp. at 9; Covad's Goodpastor Supp. Decl. Aff. ¶ 17; Rhythms Supp. at 9. Covad and Rhythms ignore the FCC's conclusion that "[l]ine sharing through the simultaneous use of discrete electromagnetic frequencies on a single wire pair to provide separate communications services, is the only form of line sharing considered in this Order, and is only possible on metallic loops. Thus, fiber-based transmission systems are not considered in this Order." Line Sharing Order, 14 FCC Rcd at 20923, ¶ 17 n.27 (emphases added). To the extent that the Line Sharing Order actually addresses fiber-based systems, the FCC concluded that incumbent carriers must offer unbundled access to the copper subloop, and to the HFPL of the copper subloop. Id. at 20956, ¶¶ 91-92. Wherever SWBT employs a DLC system, SWBT offers unbundled access to the copper loop segment. Auinbauh/Lube Supp. Reply Aff. ¶ 29 (App. A, Vol. A-1, Tab 2).

D. SBC's Separate Advanced Services Affiliate Is Fully Operational

Various CLECs invoke the concern, stated in DOJ's March 20, 2000 Ex Parte Letter on the January 10 Application, that SWBT's advanced services affiliate is not fully operational. See Sprint Supp. at 19-23; @Link, et al. Supp. at 7-11; CCTX Supp. at 8-10. Southwestern Bell's previous filings in this proceeding have addressed each of those concerns, and we will not repeat the substance of those discussions here. See Ex Parte Letter from James D. Ellis, SBC at 15-16, (Apr. 5, 2000); Brown Supp. Aff. ¶¶ 7-22; SWBT Reply Br. at 34-37; SWBT Br. at 43-44.

In fact, the commenters raise but a single new contention. In a lengthy and relatively unusual argument, AT&T collaterally attacks the legality of certain provisions in the

Commission's SBC/Ameritech Order.[21] See AT&T Supp. at 64-70. Specifically, AT&T demands that the FCC summarily set aside its determination in the SBC/Ameritech Order that a separate advanced services affiliate that fulfills the Order's conditions "shall not be deemed a successor or assign of a BOC or incumbent LEC for purposes of applying 47 U.S.C. §§ 153(4) or 251(h)." 14 FCC Rcd at 14970, App. C ¶ 3 (footnote omitted).

This section 271 proceeding is not a proper forum for challenging prior Commission rulings. AT&T is an intervenor in an appeal currently pending before the United States Court of Appeals for the D.C. Circuit, which will address exactly the same arguments that AT&T attempts to raise in these proceedings. See Telecommunications Resellers Ass'n v. FCC, No. 99-1441 (D.C. Cir.); see also Joint Brief of Appellant and Supporting Intervenors at 27, Telecommunications Resellers Ass'n v. FCC, No. 99-1441 (D.C. Cir. filed May 8, 2000) (arguing that FCC's conclusion that "SBC/Ameritech advanced services affiliates are not 'successors or assigns' under section 251(h) is arbitrary and contrary to law"). AT&T's participation in the pending appeal serves as testament to the fact that the issues it raises here have been resolved by a final order of the Commission.

In any event, AT&T's argument is without merit. While the 1996 Act states that a successor or assign of an incumbent LEC/BOC will be treated as an incumbent LEC/BOC, 47 U.S.C. §§ 251(h)(1)(B)(ii) and 153(4)(B), the Act does not define "successor" or "assign." In the SBC/Ameritech Order, therefore, the Commission reasonably turned to section 272 as the springboard for its analysis of when an entity is a successor or assign; clearly, Congress did not

[21] Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communication Inc., Transferee, For Consent to Transfer Control, 14 FCC Rcd 14712 (1999) ("SBC/Ameritech Order").

intend that a separate affiliate operated in accordance with section 272 would be treated as an alter ego of the BOC itself. The merger conditions hold ASI and SWBT to section 272's structural, transactional, and nondiscrimination requirements in all respects except for a few rules, enumerated in the merger conditions, that were necessary to adapt section 272 to the advanced services context. SBC/Ameritech Order, 14 FCC Rcd at 14898, ¶ 456. If ASI and SWBT should fail to meet these standards, the rebuttable presumption that ASI is not a successor or assign would cease to apply. Id. at 14893, ¶ 445.

Each of the permitted departures from section 272 has ample support in the record of the merger proceeding. The Commission specifically found that each special provision was nondiscriminatory and consistent with the public interest, and that there was no issue of substantial integration of incumbent and separate affiliate operations. Id. at 14900-01, ¶ 459, 14905-09, ¶¶ 468-476. And, the Commission specifically left room for case-by-case review if the circumstances so require. Id. at 14900, ¶ 458; id. at 14970, App. C, ¶ 3 n.4. The Commission's interpretation and application of the broad statutory successor and assign language is therefore reasonable and consistent with the 1996 Act as a whole, and will be entitled to deference in the pending court challenge. See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

Relatedly, AT&T challenges the carrier-to-carrier promotions, including discounts on unbundled local loops used to provide facilities-based residential service, that were endorsed by the Commission in the SBC/Ameritech Order. AT&T Supp. at 62-64. AT&T claims these promotions are unlawful because they do not match the terms required under sections 251(c) and 252(d)(1). Id. at 62. In the SBC/Ameritech Order, however, the Commission considered the same objections of AT&T and concluded that the carrier-to-carrier promotions would "bring

more competitive offerings to residential customers" and were voluntarily negotiated agreements under section 252(a)(1) that were not subject to the requirements of section 251(c) or section 251(b). See 14 FCC Rcd at 14914-16, ¶¶ 493-497. No party challenged that determination on appeal from the SBC/Ameritech Order. Accordingly, the Commission's ruling in the SBC/Ameritech Order is final and dispositive.

E. Claimed Concerns Regarding Project Pronto Are Unripe and Unfounded

Several commenters raise concerns about SWBT's "Project Pronto," which is a plan to upgrade or construct additional remote terminals to make xDSL service available to a broader range of customers, particularly residential customers who live too far from a central office to be served using most technologies today.

SBC conceived Project Pronto as an initiative to provide integrated voice and data capabilities to additional local customers. Project Pronto responds to the key technical limitation of most DSL services – their inability to be provided over long distances. See Auinbauh/Lube Supp. Reply Aff. ¶¶ 6, 15-16. Since customers cannot be moved closer to SBC's facilities, SBC in essence will move its network closer to the customers, by upgrading or constructing approximately 20,000 remote terminals in 13 states. Id. ¶¶ 14, 21. These remote terminals will be connected to the Southwestern Bell central offices using fiber-optic feeder facilities, and to customer premises using upgraded copper facilities. Within the remote terminal would be the equipment necessary to make the transition from copper to fiber facilities for both traditional POTS and advanced services.

The end result of Project Pronto, if it is allowed to proceed as planned, is that 80 percent of SBC's customers will be within 12,000 feet of a central office or remote terminal and

therefore suitable for ADSL service. Id. ¶ 21. Project Pronto will enable competitive broadband providers to offer high-speed service to approximately 77,000,000 retail customers. Id.

SBC selected Next Generation Digital Loop Carrier ("NGDLC") for its Project Pronto infrastructure because NGDLC will improve not only data transmission, but also POTS efficiency and reliability. If a DSLAM were used, the POTS would have to be carried by the embedded voice loop network, whereas with NGDLC, the POTS can be more economically transported back to the central office. Indeed, incumbents have been deploying DLC technology for years – long before DSL services were conceived – because of its advantages for voice service and lower maintenance costs. See id. ¶¶ 10, 17-21.

It is undisputed that Project Pronto will further the 1996 Act's goal of deployment of advanced services to significantly more customers on a timely, efficient, and affordable basis. See 47 U.S.C. § 157 note. Indeed, AT&T concedes that Project Pronto "will shorten the lengths of the copper loop plant that services customers' homes, thereby increasing the total number of customers who will be able to obtain xDSL services and improving the quality and value of the services they can obtain." AT&T Supp. at 23.

Rather than opposing the unassailable customer benefits of Project Pronto, the commenters that raise this issue object to narrow details of SBC's anticipated implementation of the initiative. The section 271 process is no place to air such hypothetical grievances about a BOC's possible future policies. If a BOC cannot satisfy section 271 inquiry based on "future promises,"[22] then it certainly cannot fail the checklist based on objections to hypothetical future

[22] See Memorandum Opinion and Order, Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd 20599, 20637, ¶ 56 n.148 (1998).

policies. Moreover, there is no legitimate basis for any party to claim that Project Pronto will not fully comply with the 1996 Act and the Commission's rules. See CompTel Supp. at 6; AT&T Supp. at 24; Level 3 Supp. at 5 n.13.

Any option for provisioning DSL-based services previously available to the CLECs prior to the roll-out of Project Pronto would still be available to the CLECs after the roll-out of Project Pronto. See Auinbauh/Lube Supp. Reply Aff. ¶ 29. CLECs may secure their own rights-of-way or easements and construct facilities to access the subloop to deploy advanced services. Id. CLECs maintain the option of collocating their equipment where space is available in the remote terminal – indeed, SBC is sizing new Project Pronto remote terminals specifically to provide extra space for collocators. Id. ¶¶ 29, 31. Finally, because Project Pronto is an overlay project, and existing copper facilities will not be pulled from the ground, CLECs have the option of using all-copper loops. Id. ¶¶ 29-30. If neither space nor spare copper loops are available, SWBT will unbundle its packet switching in accordance with the UNE Remand Order.[23]

Above all this as SWBT has explained to the Commission in Docket No. 98-141,[24] SWBT is proposing to offer a Broadband Service[25] that would give unaffiliated data CLECs

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[23] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999) ("UNE Remand Order").

[24] See, e.g., Ex Parte Letter from Marian Dyer, Vice President-Federal Regulatory, SBC (Mar. 22, 2000); Letter from Austin C. Schlick, Kellogg, Huber, Hansen, Todd & Evans (Apr. 6, 2000); Letter from James K. Smith, Executive Director-Federal Regulatory, SBC (May 11, 2000).

[25] The Broadband Service provides end-to-end access to the port on the optical concentration device ("OCD") in the central office, the virtual circuit between the OCD and the NGDLC equipment in the remote terminal to transport the CLEC's data traffic, and a line-shared copper subloop from the remote terminal to the customer premises.

access to precisely the same SWBT Project Pronto facilities as are made available to SBC's own data CLEC (ASI). Assuming that SWBT is permitted by regulators to own the necessary facilities, this offering would be made available at UNE prices, and would be offered even when collocation space is available in the remote terminal and even when spare copper loops are available. Auinbauh/Lube Supp. Reply Aff. ¶ 28.

Although Rhythms suggests that Project Pronto will limit the opportunities for line sharing, Rhythms Supp. at 9, Rhythms does not – nor could it – argue that Project Pronto is at odds with the Line Sharing Order. SWBT will still fully comply with the Line Sharing Order's requirement that incumbents unbundle the high frequency portion of loops and subloops when the incumbent is providing the voice service. As already noted, however, SWBT is under no obligation to provide line-shared loops when SWBT does not provide the voice service. Line Sharing Order, 14 FCC Rcd at 20947, ¶ 72 ("The record does not support extending line sharing requirements to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop for a competitive LEC to obtain access to the high frequency portion."). Project Pronto does not limit in any way the options for CLECs under the UNE Remand Order, the Line Sharing Order, or the 1996 Act generally; rather, it provides a new competitive alternative that allows any interested data CLEC to reach new customers further from the central office, on just the same basis as SBC's own ASI affiliate. Indeed, the Broadband Service offering will ensure that CLECs have the same opportunity as ASI to compete in the advanced services marketplace. Every CLEC – including ASI – will follow the same process and systems to purchase the Broadband Service.

AT&T claims that SWBT is not willing to provide access to the Project Pronto architecture in situations in which AT&T is providing voice service over UNEs. AT&T Supp. at

23-24; AT&T's Pfau/Chambers Supp. Decl. ¶ 65; see also CompTel Supp. at 6. That is, AT&T claims that ASI will be able to purchase only one service (for data) whereas integrated voice/data providers are required to purchase two services (for voice and data). See AT&T's Pfau/Chambers Supp. Decl. ¶ 66. AT&T makes a very basic mistake. While it is true that ASI need only buy one wholesale service (the Broadband Service) to provide its data service, SBC is only able to provide both voice and data service because SWBT additionally has built a network to provide voice service. AT&T is thus in precisely the same position as SBC – it can make arrangements to provide voice service, and buy the Broadband Service, and combine these offerings to offer a package of voice and data service.

In any event, however, SBC is developing an additional service offering that – assuming regulatory concurrence in the planned Project Pronto architecture – would respond directly to the real issue underlying AT&T's rhetoric. Under that offering, the details of which are being finalized, full-service CLECs will be able to purchase a service that offers both voice and data carriage over the Project Pronto facilities. AT&T's prospective concern about the opportunities available to such full-service CLECs is thus unfounded – assuming Project Pronto is allowed to proceed as planned. See Auinbauh/Lube Supp. Reply Aff. ¶ 26.

Allegiance and others argue that Project Pronto will limit CLECs' ability to offer varieties of DSL services beyond ADSL. Allegiance at 11; see also ALTS/CLEC Coalition Supp. at 7-8. Project Pronto in no way limits CLECs' ability to offer the advanced services they wish to offer. As noted, Project Pronto is a voluntary offering that expands CLECs' options. CLECs will maintain the same rights to collocation and unbundled elements that existed before. Project Pronto simply gives CLECs an additional opportunity to take advantage of the Broadband Service.

More fundamentally, SBC is under no obligation to design its network to fit each individual CLEC's business plan; the Eighth Circuit's holding in Iowa Utilities Board (unchallenged in the Supreme Court) makes it quite clear that CLECs are entitled to nondiscriminatory access to the incumbent's existing network, not to a yet unbuilt superior one. Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997), aff'd in part, rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999). But in any event, SBC does intend to deploy (and make available to CLECs through the Broadband Service) additional "flavors" of xDSL as the necessary equipment becomes available. Auinbauh/Lube Supp. Reply Aff. ¶ 27. The critical fact is that such equipment does not exist today, and the actual choice faced by SBC (and data CLECs interested in the ADSL Broadband Service) is whether to deploy ADSL technology, or no xDSL technology at all.

II. SWBT PROVIDES NONDISCRIMINATORY ACCESS TO UNBUNDLED LOOPS THROUGH ITS TWO HOT CUT PROCESSES

Newly available data confirm that SWBT offers timely and reliable loop conversions through the hot cut process. Based upon performance results reconciled with interested CLECs under the direct supervision of the Texas PUC, SWBT's coordinated hot cut process consistently meets each of the three performance standards articulated in the New York Order. Moreover, SWBT's optional mechanized hot cut process provides nearly the same level of performance, at lower cost to the CLEC. As additional confirmation of the reliability of SWBT's data showing nondiscriminatory performance, the reconciliations conducted with AT&T, MCI WorldCom, ICG, and NextLink revealed only minimal discrepancies in SWBT's records, and only a handful of instances in which the reconciliation affected SWBT's satisfaction of a Texas PUC performance standard.